Where substance of statement which defendant had made to police detective was disclosed to defense counsel a week before trial, disclosure came soon enough for defense counsel to prepare for trial and, therefore, any prejudice to defendant from prosecutor's failure to make timely formal disclosure of defendant's statement was minimal and trial court did not abuse discretion in allowing detective to testify as to defendant's statement. *State v. Torres*, 27 Ariz.App. 556, 556 P.2d 1159 (1976).

This rule governing exclusion of a witness for failure to timely disclose does not require trial court to give its reasons for imposing a sanction, whatever it may be, even though it probably would be a better practice for trial court to do so. *State v. Williams*, 113 Ariz. 442, 556 P.2d 317 (1976).

Physical condition of defendant

Where the "surprise" evidence consisted of testimony about defendant's own physical condition, namely, "trackmarks" on his arms, a condition of which the prosecution first became apprised by a police officer during a trial recess, no specific prejudice to defendant could be found in the introduction of such evidence at trial. *State v. Mosley*, 119 Ariz. 393, 581 P.2d 238 (1978).

Informers

Where informant was present only at one transaction, error in failure to require state to disclose identity of confidential informant required only that conviction for sale of heroin based on such transaction be set aside, without affecting conviction for separate transaction. *State v. Gutierrez*, 121 Ariz. 176, 589 P.2d 50 (App. 1978).

Photographs

Admission of two color photographs of victim, over objection that prosecution had failed to disclose photographs until day of trial in violation of discovery rule, could not serve as basis for reversal, where evidence was overwhelmingly against defendant and admission of photographs did not change result of trial. *State v. Miller,* 112 Ariz. 95, 537 P.2d 965 (1975).

Absent showing that defense was prejudiced in presentation of its case by prosecutor's late disclosure of photograph, there was no basis for reversal. *State v. Durham*, 111 Ariz. 19, 523 P.2d 47 (1974).

X-rays

While the state did not specifically disclose the existence of the rib and the X ray of the rib of the victim until the X ray was made during trial, where it was clear that the X ray evolved out of the testimony of the late-disclosed defense witnesses, and the defendant was given an opportunity to question the physician witnesses prior to the admission of the X ray and was also given an opportunity to move to allow one of his own witnesses to examine the rib and the X ray, trial court did not err in admitting the X ray. *State v. Walton,* 133 Ariz. 282, 650 P.2d 1264 (App. 1982).

Loss of evidence

Even though police testing for fingerprints on envelope destroyed murder defendant's ability to test envelope for saliva, defendant was not entitled to dismissal absent finding that evidence was destroyed in bad faith. *State v. Lang,* 176 Ariz. 475, 862 P.2d 235 (App. 1993).

Where defendant had opportunity to inspect evidence, there was no bad faith or connivance on part of state and it did not appear that defendant was prejudiced by loss of evidence, there was no compelling reason to either dismiss charge against him or suppress any references to otherwise competent evidence on basis that police had disposed of physical evidence following prior conviction. *State ex rel. Hyder v. Hughes*, 119 Ariz. 261, 580 P.2d 722 (1978).

Defendant accused of driving while under influence of alcohol failed to make requisite showing of bad faith or prejudice in State's failure to preserve videotape of him taken after his arrest; showing of prejudice dependent on

speculation as to potentially exculpatory value of the lost evidence was insufficient to justify dismissal. *State v. Gerhardt,* 161 Ariz. 410, 778 P.2d 1306 (App. 1989).

State had no duty to preserve partial latent fingerprints on murder weapon where prints had insufficient number of points to make identification, and could not have excluded defendant from having handled gun while committing crime, and thus State's destruction of fingerprints did not deny defendant's due process right to fair trial. *State v. Tucker*, 157 Ariz. 433, 759 P.2d 579 (1988).

Defendant was entitled to dismissal of charges due to State's destruction of evidence which defendant specifically requested be preserved; crucial issue was whether officers had reasonable suspicion to stop defendant's vehicle, and requested police radio transmission tape would have revealed reasons given over air by officers for stopping defendant's vehicle and an accompanying vehicle, time periods involved, and identities of vehicles and drivers, and State gave no reason for destruction of tape other than fact that it was routine procedure to destroy tapes after 60 days. *State v. Lopez*, 156 Ariz. 573, 754 P.2d 300 (App. 1987).

Negligence of defense counsel

Trial court abused its discretion by precluding defendant from calling three witnesses and from offering his documentary evidence as sanction for late disclosure, where evidence was vital and discovery violations occurred because defense counsel was negligent, not because he acted in bad faith. *State v. Killean*, 184 Ariz. 164, 907 P.2d 550 (App. 1995), review granted, vacated 185 Ariz. 270, 915 P.2d 1225.

Reasonable evidence supported trial court's conclusion that defense counsel's conduct in failing to disclose witnesses and documentary evidence in discovery was negligent, but not willful misconduct, where defendant lived in New York, was in Arizona only for suppression hearing, and waived his presence at most of pretrial hearings. *State v. Killean*, 184 Ariz. 164, 907 P.2d 550 (App. 1995), review granted, vacated 185 Ariz. 270, 915 P.2d 1225.

Prosecutorial misconduct

Situation which occurred when prosecution was allowed to compel defendant's presence in a lineup involving another individual and, during course of that lineup, to bring a witness into viewing room for purpose of determining whether she could identify defendant was not one of prosecutorial misconduct warranting sanctions in that witness did not select defendant as her assailant and no prejudice was demonstrated to defendant as a result of witness' presence at lineup. *State v. Rodriquez,* 145 Ariz. 157, 700 P.2d 855(App. 1984).

Prosecutor's misconduct in failing to disclose change in gun from its condition on morning of fatal shooting, and his impeaching defendant on condition of the gun, were improper but were not reversible error where fact that gun had been broken after defendant's arrest was brought to jury's attention by testimony of two witnesses. *State v. Cannon*, 133 Ariz. 216, 650 P.2d 1198 (1982).

Bad faith

Defense counsel's failure to reveal existence of corroborative documentary evidence until trial constituted willful misconduct; no explanation was offered for counsel's failure to follow requirements of Rules of Discovery with respect to such evidence, defense counsel issued subpoenas for such evidence at least a week before trial, and counsel was certified criminal law specialist with 38 years' experience who could not claim ignorance of requirements of rules. *State v. Killean*, 184 Ariz. 164, 907 P.2d 550 (App. 1995), review granted, vacated 185 Ariz. 270, 915 P.2d 1225.

Criminal defendant's vital evidence can be precluded as sanction for discovery violation only where conduct of defense counsel or defendant amounts to bad faith or willful misconduct. *State v. Killean*, 184 Ariz. 164, 907 P.2d 550 (App. 1995), review granted, vacated 185 Ariz. 270, 915 P.2d 1225.

Failure of prosecutor to interview potential witness before his deportation was not done in bad faith, and, thus, defendant was not denied due process in prosecution for murder. *State v. Serna*, 163 Ariz. 260, 787 P.2d 1056 (1990).

Preclusion of evidence, generally

If sanction for failure to timely disclose material evidence is warranted, it should have minimal effect on evidence and merits of case, and precluding evidence is rarely appropriate sanction. *State v. Towery*, 186 Ariz. 168, 920 P.2d 290 (1996).

Refusal of trial court to preclude admission of blood stains on glove belonging to murder defendant and fingerprints taken from compact disk player in victim's automobile as sanction for state's failure to timely disclose evidence did not constitute abuse of discretion; evidence was of little importance to state's case, defendant was given timely notice of identity of latent print and blood experts and should not have been surprised when they were called, and there was no evidence of prosecutorial bad faith. *State v. Towery*, 186 Ariz. 168, 920 P.2d 290 (1996).

Preclusion of evidence not disclosed by defense counsel until date of defendant's trial for possession of marijuana for sale and transportation of marijuana for sale was appropriate sanction for defense counsel's willful misconduct in failing to reveal evidence until trial; sanction was precisely proportionate to harm caused by discovery violation, defendant was still able to offer testimony as to subject matter of precluded evidence, trial judge could not be sure how long a continuance would be necessary to obtain testimony of party implicated by precluded evidence, and declaration of mistrial would have defeated important interest in efficient judicial administration. *State v. Killean*, 184 Ariz. 164, 907 P.2d 550 (App. 1995), review granted, vacated 185 Ariz. 270, 915 P.2d 1225.

Witnesses precluded from testifying--In general

Trial court's prohibition of defense witness' testimony due to defendant's failure to give timely notice either of the defense of consent or name of witness who supported it did not present issue of whether confrontation clause of U.S.C.A. Const.Amend. 6 or right to present a defense implicit in that amendment were violated, where defendant thereafter waived right to jury trial and to testify himself and allowed question of his guilt or innocence to be determined based on testimony given at preliminary hearing. *Robbins v. Cardwell*, 618 F.2d 581 (C.A. 9 Ariz. 1980).

Although preclusion of testimony is statutory sanction for discovery violations, it impinges on defendant's Sixth Amendment right to present witnesses in his own defense, and therefore it is rarely appropriate sanction for discovery violation and should be used only as last resort. *State v. Valencia*, 186 Ariz. 493, 924 P.2d 497 (App. 1996).

Prosecution was surprised by defense counsel's disclosure, immediately before voir dire, that it would call three witnesses, and by documentary evidence introduced during defendant's opening statement, supporting preclusion of evidence as sanction for discovery violation, where evidence that defendant sought to introduce supported his defense that he did not own suitcase in which narcotics were found, and there was no indication before first day of trial that defendant would deny ownership of suitcase. *State v. Killean*, 184 Ariz. 164, 907 P.2d 550 (App. 1995), review granted, vacated 185 Ariz. 270, 915 P.2d 1225.

Individuals to whom defendant allegedly confessed while incarcerated should not have been excluded from testifying because of prosecutor's failure to timely disclose individuals as witnesses where defendant had threatened another State's witness and individuals were essential to State's ongoing investigation of such threat. *State v. Schrock*, 149 Ariz. 433, 719 P.2d 1049 (1986).

In applying sanctions for violations of Criminal Rules 15.1 and 15.2 governing the disclosure of witnesses trial court should impose sanctions which affect the evidence at trial and the merits of the case as little as possible, since the Rules of Criminal Procedure are designed to implement, not to impede, the fair and speedy determination of cases; prohibiting the calling of the witness should be invoked only in those cases where other less stringent sanctions are not applicable to effect the ends of justice. *State v. Fisher*, 141 Ariz. 227, 686 P.2d 750 (1984).

Four criteria exist for determining whether the sanction of preclusion of an undisclosed witness' testimony should be imposed: (1) how vital the witness is to the case, (2) whether the opposing party will be surprised, (3) whether the discovery violation was motivated by bad faith, and (4) any other relevant circumstances. *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984).

While sanction of preclusion of witness' testimony for failure to abide by discovery rule should be applied only in those cases where less stringent sanctions are not appropriate to effect ends of justice, where trial court was justifiably upset by defendant's former attorney's conduct of contacting one of alleged victims and arranging surreptitious showup between defendant and victim, in violation of court's orders, trial court did not err in prohibiting defendant's former attorney's testimony that victim did not recognize appellant when she waited on him at fast-food restaurant. *State v. Frederick*, 129 Ariz. 269, 630 P.2d 565 (App. 1981).

Prohibiting calling of witness should be invoked only in those cases where other less stringent sanctions for failure to disclose witnesses are not applicable to effect ends of justice, and to be effective, discovery rules must be applied with equal force to both parties. *State v. Smith*, 123 Ariz. 243, 599 P.2d 199 (1979).

Failure of defendant to comply with disclosure requirements of Criminal Rule 15.2 requiring defendant to provide notice of defenses and names and addresses of all witnesses may properly result in imposition of sanctions, including preventing defense witnesses from testifying, but imposition of sanction of prohibiting calling of witnesses should be invoked only in those cases where other less stringent sanctions are not applicable to effect the ends of justice. *State v. Gutierrez*, 121 Ariz. 176, 589 P.2d 50 (App. 1978).

Although the court ordered statements of two prosecution witnesses to be furnished by April 23 and, if not furnished, the state was to be precluded "from going into these issues at the trial," and although the statements were not furnished by the date required, the trial court, on defendant's motion to impose sanctions, did not abuse its discretion in failing to preclude the state from calling those two witnesses, where destruction of a tape of their statements occurred without any attempt to keep evidence from the defense, where the tape would not have aided the defense since it was unintelligible, where the witnesses were made available to the defense for interview and, prior thereto, a summary of their statements was furnished, and where the defense was also offered a continuance. *State v. Hunt*, 118 Ariz. 431, 577 P.2d 717 (1978).
Violation of a notice-of-witness rule does not automatically disqualify a witness; if defense is given an opportunity to meet and question the undisclosed witness prior to the proffered testimony, it is generally not an abuse of discretion to permit the witness to testify. *State v. LaBarre*, 115 Ariz. 444, 565 P.2d 1305 (App. 1977).

In prosecution for first-degree burglary, defendant was neither prejudiced nor put in unfair position by trial court's ruling allowing witness to testify despite failure to disclose such witness, where witness had previously testified at preliminary hearing and had been cross-examined by same defense counsel and his testimony was limited by trial court to identification of goods stolen from restaurant. *State v. Warren*, 26 Ariz.App. 371, 548 P.2d 1183 (1976).

Trial court did not abuse its discretion or deprive defendant of his constitutional right to fair trial by refusing to allow defense witness to testify, where, with respect to that witness, defendant had violated provision of Rules Cr.Proc., Rule 15.2 requiring pretrial disclosure by defendant of names and addresses of all witnesses whom he will call at trial. *State v. Talley*, 112 Ariz. 268, 540 P.2d 1249 (1975).

Although defendant had genuine need for testimony of two witnesses, whose testimony would have been relevant to issue of whether defendant was too drunk to form the requisite specific intent, trial court did not abuse its discretion in precluding such testimony, on ground that witnesses were not disclosed to the prosecutor prior to trial, where defense counsel alone was to blame for loss of such testimony; although trial court could have continued case to allow the prosecutor additional time, it was within its discretion to refuse to do so in view of the heavy court congestion. *State v. Scott*, 24 Ariz.App. 203, 537 P.2d 40 (1975).

List of witnesses, witnesses precluded from testifying

Failure to include criminalist on state's witness list did not mandate that criminalist's testimony be excluded in absence of showing of prejudice; state provided defense counsel with copy of criminalist's report concerning blood smears found on murder victim's filing cabinet, repeated references to criminalist as being witness were made in

open court without objection from defense counsel, and criminalist's testimony did not tie bloodstain to victim or defendant. *State v. Salazar*, 173 Ariz. 399, 844 P.2d 566 (1992).

Trial court, in prosecution for burglary, did not abuse discretion in allowing thrift store's manager to testify that store was broken into and to identify the safe and value of its contents where defendant, after state did not disclose manager as a witness as required by Rules Cr.Proc., Rule 15.1, raised no objection nor did he request an interview with manager when manager's name was mentioned in list of witnesses presented during voir dire. *State v. Gambrell*, 116 Ariz. 188, 568 P.2d 1086 (App. 1977).

Where prosecution had not intended to introduce fragments of window broken in burglary, since they contained no legible fingerprints, and prosecution only called chief of police in effort to explain why the fragments had not been sent away for fingerprint analysis when the issue was raised by defense, even though chief had not been listed as a state witness, trial court did not abuse discretion in holding that circumstances did not warrant sanction of excluding chief's testimony. *State v. Gambrell*, 116 Ariz. 188, 568 P.2d 1086 (App. 1977).

Where attorney for one defendant knew of all witnesses who were to be used by state at trial, one of two witnesses about whom complaint was made did not actually testify at trial but testified at pretrial motion to suppress, other witness was a chemist for Department of Public Safety whose report had been placed in evidence at preliminary hearing, and words "D.P.S. chemist" were typed on information, trial court did not abuse its discretion in failing to impose sanctions against state for its alleged failure to disclose names of two witnesses. *State v. Dupuy*, 116 Ariz. 151, 568 P.2d 1049 (1977).

Where the State, pursuant to motion, made available to defendant all reports and statements of witnesses, which contained names and addresses of two key witnesses, but on list of names and addresses of State's witnesses omitted the names of such two witnesses, and there was no showing of bad faith, trial court abused discretion in precluding the testimony of such two witnesses, since Rules Cr.Proc., Rule 15.1 requiring names and addresses of witnesses together with their statements does not by its terms require that a "list" be furnished and since defendant was not prejudiced and made no request for continuance. *State v. Birdsall*, 23 Ariz.App. 454, 533 P.2d 1191 (1975).

Refusal to permit State to call witness whose name had been furnished to defendant's counsel more than a month prior to trial because witness' name had not been furnished prior to date by which county attorney had been ordered to endorse on information and supply to defendant a complete list of witnesses constituted an abuse of discretion in absence of showing of prejudice to defendant. *State ex rel. Berger v. Superior Court In and For Maricopa County*, 108 Ariz. 125, 493 P.2d 908 (1972).

Addresses of witnesses, witnesses precluded from testifying

Defendant's due process rights were not violated by the prosecutor's denial of possession of address for potential witness who had been deported before questioning; testimony was not shown to have been favorable to defendant and prosecutor acted in good faith in attempting to locate witness after deportation. *State v. Serna*, 163 Ariz. 260, 787 P.2d 1056 (1990).

Where defendant willfully failed to comply with discovery rule and court orders, where defendant's offer of proof of prospective witness' testimony was insufficient to fully inform court of its relevancy, let alone vitality, and where defendant waited for almost two months after discovering the issue to request relief from order concerning preclusion of witnesses without addresses, there was neither justification for defendant's conduct or prejudice to his defense, and consequently trial court acted properly in precluding witnesses' testimony because of failure to provide addresses. *State v. Fendler*, 127 Ariz. 464, 622 P.2d 23 (App. 1980).

In prosecution for possession of a pistol by a felon, trial court, which found that state had failed to comply with Rules Cr.Proc., Rule 15 governing discovery by not disclosing expert fingerprint witness, did not abuse its discretion in allowing such witness to testify and in refusing to declare a mistrial, where defendant declined trial court's offer to take a recess in order to allow defense counsel to question witness before she testified, defendant could easily have foreseen that state would utilize a fingerprint expert in order to identify him as a prior felon and defendant did not avail himself of opportunity offered by trial court to have defendant's own experts look at fingerprint sheet. *State v. Piedra*, 120 Ariz. 53, 583 P.2d 1373 (App. 1978).

In proceeding in which accused was convicted of first-degree murder and in which he raised insanity defense, refusal to exclude doctor's testimony that in his opinion accused could distinguish right from wrong on day of offense because of state's alleged noncompliance with Criminal Rule 15.1 in failing to inform defense counsel of doctor's conclusions was not an abuse of discretion, in view of fact that it was indeterminate as to whether there had been noncompliance with rule and that accused was not shown to have been prejudiced due to the nondisclosure. *State v. Ramirez*, 116 Ariz. 259, 569 P.2d 201 (1977).

Where defendant did not assert that lack of notice of expert witness prevented him from securing rebuttal witness or otherwise show prejudice, admission of expert testimony of police officer regarding modus operandi of crime of which defendant was accused was not abuse of discretion, despite prosecutor's failure to give notice of expert witness. *State v. Kevil*, 111 Ariz. 240, 527 P.2d 285 (1974).

Expert witnesses precluded from testifying

Trial court's failure to preclude expert's testimony, based on state's failure to fully disclose results of expert's assessment of defendant's mental health, was not reversible error in capital murder prosecution; although state engaged in improper conduct by failing to disclose scope of expert's testimony, court imposed appropriate initial sanction by proposing short continuance, and defense refused to accept opportunity to interview expert to determine whether the defense required additional time or witnesses to adequately prepare its rebuttal. *State v. Roque*, 213 Ariz. 193, 141 P.3d 368 (2006).

In determining whether to prohibit the calling of a witness who has not been properly disclosed, court should consider how vital the precluded witness is to the proponent's case, whether the opposing party will be surprised and prejudiced by the witness's testimony, whether the discovery violation was motivated by bad faith or willfulness, and any other relevant circumstances. *State v. Roque*, 213 Ariz. 193, 141 P.3d 368 (2006).

Trial court did not abuse its discretion in failing to grant further relief, after it proposed short continuance based on state's failure to fully disclose results of expert's assessment of defendant's mental health, in capital murder prosecution; defense should have accepted opportunity to interview expert to determine whether it required additional time or witnesses to adequately prepare its rebuttal, defense could have requested appropriate continuance or suggested another approach if more time was needed, and since defense categorically rejected court's initial attempt to resolve dispute, prejudice defense may ultimately have suffered could not be assessed. State v. Roque.

Where State's excuse for not previously disclosing witness, a clinical psychologist, to testify in prosecution for, inter alia, kidnapping and sexual assault, as to victim's possible reactions to trauma, was that it did not realize consent was claimed as defense since defendant had not disclosed defenses pursuant to Rules Cr.Proc., Rule 15.2, and where prosecutor notified defendant's counsel of new witness day before trial, trial court did not err in refusing to preclude witness. *State v. Taylor*, 135 Ariz. 262, 660 P.2d 863 (App. 1982).

Rebuttal witnesses precluded from testifying

In prosecution for kidnapping, sexual assault, and aggravated assault, trial court did not err in allowing an undisclosed rebuttal witness to testify for prosecution, even though prosecutor was subject to sanction for violation of Rules Cr.Proc., Rule 15.1 by failing to disclose rebuttal witness during discovery process, in that scope of witness' testimony was limited, defense counsel was given time to interview the witness, and after interview of the witness, defense made no motion for continuance or otherwise indicated that defendant was prejudiced. *State v. Robinson*, 127 Ariz. 324, 620 P.2d 703 (App. 1980).

In proceeding in which accused was convicted of unlawful sale of narcotics, in which defense counsel attempted to elicit information that officer had mistaken accused for his roommate and in which officer testified that he had never seen roommate and was unable to identify him, permitting another officer, who had not been disclosed to accused, to give rebuttal testimony, in which he identified roommate, while State's case-in-chief was in progress and while trial judge was under impression that accused was not going to present evidence was not abuse of discretion. *State v. Tuell*, 112 Ariz. 340, 541 P.2d 1142 (1975).

Continuance

Inasmuch as defendant's post-arrest denials of culpability to third party were inadmissible hearsay in defendant's prosecution for manslaughter, they were not material, and as such, prosecution's delay in handing over police reports containing such statements did not require continuance as sanction for discovery violation. *State v. Tinajero*, 188 Ariz. 350, 935 P.2d 928 (App. 1997).

Continuance is not necessarily the only proper remedy for violation of rule requiring state to provide notice of intent to seek death penalty within 30 days of arraignment but, rather, other available sanctions include preclusion of death penalty. *Barrs v. Wilkinson In and For County of Maricopa*, 186 Ariz. 514, 924 P.2d 1033 (1996).

As sanction for state's failure to disclose crucial bite videotape prepared by its dental expert until day before trial, trial court should have either granted continuance or precluded the tape when first asked to do so; telling defendant to examine the tape between start of trial and day it was shown was not adequate to cure the harm. *State v. Krone,* 182 Ariz. 319, 897 P.2d 621 (1995).

In prosecution for stabbing fellow inmate at state prison, trial court was not required, sua sponte, to continue case when state disclosed on the third day of trial that it had just discovered that a knife had been found on day of stabbing in area of garbage bins where name of guard who found knife was given to defense attorneys but neither attorney pursued the matter. *State v. Longoria*, 123 Ariz. 7, 596 P.2d 1179 (App. 1979).

Where defendant, who was charged with unlawful possession of narcotic drug following search of his motorcycle which disclosed hashish, could in light of grand jury transcript reasonably have expected proof at trial as to ownership of motorcycle, and where defendant made no motion for continuance to remedy any possible prejudice resulting from failure of state to disclose registration of defendant's motorcycle in compliance with Rule 15.1, failure to exclude registration of motorcycle from evidence for state's failure to disclose was not abuse of discretion. *State v. Longoria*, 123 Ariz. 7, 596 P.2d 1179 (App. 1979).
Denial of defendant's motion for continuance on grounds that a preliminary hearing had not been held and that defendant's right to discovery had been impaired was not abuse of discretion where defendant's attorney had been informed two months before trial that agreement to drop charges would not be honored, defendant's counsel did not utilize Criminal Rule 15.1 et seq. to obtain discovery, and request for continuance for discovery was not made until day of trial. *State v. Prevost*, 118 Ariz. 100, 574 P.2d 1319 (App. 1977).

Although Criminal Rule 15.1 governing disclosure of evidence in hand of the prosecution was violated by prosecutor's failure to properly discover and make available list of witnesses and tangible evidence, the trial court did not abuse its discretion in refusing to suppress such evidence, rather than granting a continuance, especially in absence of allegation that defendant's case was prejudiced by granting a continuance rather than precluding use of the evidence. *State v. Castaneda,* 111 Ariz. 264, 528 P.2d 608 (1974).

Objections

It was not an abuse of discretion for trial court to fail to impose sanctions on prosecution for use of testimony which had not been disclosed prior to trial where defendant failed to object until after witness had left the stand. *State v. Poland,* 144 Ariz. 388, 698 P.2d 183 (1985), certiorari granted 106 S.Ct. 60, 474 U.S. 816, 88 L.Ed.2d 49, affirmed 106 S.Ct. 1749, 476 U.S. 147, 90 L.Ed.2d 123, denial of habeas corpus affirmed 151 F.3d 1014, as amended, amended and superseded on denial of rehearing 169 F.3d 573, certiorari denied 120 S.Ct. 117.

Failure, in criminal proceeding, to object to testimony regarding use of medicine bottle waived right to argue on appeal that bottle, which had been subsequently admitted, should have been excluded from evidence under provision of this rule pertaining to sanctions for failure to comply with discovery order. *State v. Clark*, 112 Ariz. 493, 543 P.2d 1122 (1975).

Defenses precluded, generally

Where prosecutor had no notice that defendant would attempt to show he was too drunk to form requisite specific intent, and defendant made no offer of proof as to what his testimony would be, trial court's use of provision of this rule permitting court to preclude parties from offering evidence or raising defense not disclosed when discovery rules had been violated was proper. *State v. Gonzales*, 123 Ariz. 11, 596 P.2d 1183 (App. 1979).

Alibi

Since an undisclosed alibi witness whose testimony was precluded was vital to the defense case, since the State was aware of said witness' existence as well as the alibi defense before trial, since nondisclosure of the witness did not appear to have been due to bad faith or willfulness, and since other less stringent sanctions, such as granting a continuance, were available to effect the ends of justice, it was reversible error to preclude the witness's testimony in defendant's prosecution for burglary, sexual assault, and aggravated assault. *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984).

It was to be presumed that trial court had sufficient reasons for exercising its discretion and ordering exclusion of an alibi witness for failure to timely disclose when defendant first informed his counsel of such witness on date trial began. *State v. Williams*, 113 Ariz. 442, 556 P.2d 317 (1976).

Trial court properly excluded testimony of alibi witness who was not listed as witness prior to trial notwithstanding subsequent ruling holding similar statutes unconstitutional as violative of due process. *State v. Kelly*, 111 Ariz. 181, 526 P.2d 720 (1974).

In absence of proper notice with respect to alibi evidence, whether such evidence will be admitted is within the discretion of the trial court. *State v. Adair*, 106 Ariz. 4, 469 P.2d 823 (1970).

Where defendant gave proper notice of intent to plead alibi and listed names of three witnesses but did not include the name of his mother and defendant gave no explanation of failure to include the name in the notice, trial court did not abuse its discretion by refusing to permit defendant's mother to testify as to his alibi. *State v. Adair*, 106 Ariz. 4, 469 P.2d 823 (1970).
Exclusion of proffered alibi evidence that defendants were in Phoenix up until early evening hours of day in which five forgeries were allegedly committed between 3:30 p.m. and 9:30 p.m. in Coolidge was not abuse of discretion, considering distance between the two municipalities and failure to file timely notice of the defense. *State v. Martin*, 2 Ariz.App. 510, 410 P.2d 132 (1966).

Insanity defense

Defendant was not entitled to continuance just prior to commencement of trial so he could be examined by psychiatrist for possible insanity defense, and there was no error in preclusion of insanity defense, as defendant attempted to disclose entirely new line of defense the day before the trial, defendant was unprepared to disclose any details of that affirmative defense or whether the expert evaluation would even support a valid insanity defense, and there was no showing that psychiatrist was vital to the case. *State v. Alder,* 146 Ariz. 125, 704 P.2d 255 (App. 1985).

In proceeding in which accused was convicted of first-degree murder and in which he raised insanity defense, refusal to exclude doctor's testimony that in his opinion accused could distinguish right from wrong on day of offense because of state's alleged noncompliance with Rule 15.1 in failing to inform defense counsel of doctor's conclusions was not an abuse of discretion, in view of fact that it was indeterminate as to whether there had been noncompliance with Rules Cr.Proc., Rule 15.1 and that accused was not shown to have been prejudiced due to the nondisclosure. *State v. Ramirez,* 116 Ariz. 259, 569 P.2d 201 (1977).

If no notice of intention to introduce evidence of insanity was given by defendant, it was within sound discretion of trial court to decide whether evidence touching on insanity would be allowed. *State v. Alford,* 98 Ariz. 249, 403 P.2d 806 (1965).

Inspection of documents and objects

Defendant failed to show any specific prejudice from the trial court's purported abuse of discretion, relative to the imposition of sanctions against the State for violations of the discovery rules, Rule 15.1 et seq., and it appeared, to the contrary, that the sanctions imposed, including an order to the State to make available for inspection by defense counsel all documents and other tangible objects seized by the police department, were proper under the facts of the case. *State v. Lippard*, 26 Ariz.App. 417, 549 P.2d 197 (1976).

Defendant was not prejudiced by the discovery rulings of the trial judge, who ordered the State to produce various documents and materials which were due defendant under Criminal Rule 15.1 and who, relative to sanctions for the State's tardiness, precluded the State from using certain documents and materials. *State v. Brewer*, 26 Ariz.App. 408, 549 P.2d 188 (App. 1976).

Interviews

Giving defense counsel in prosecution of defendant for theft of property and burglary time to interview a police officer who was present when another police officer made a comparison between a photo of a footprint taken at scene of crime with defendant's shoe by use of a magnifying glass was a reasonable solution to state's violation of spirit of discovery rules when it failed to disclose use of magnifying glass. *State v. Way*, 129 Ariz. 357, 631 P.2d 139 (App. 1981).

Suppression of nondisclosed evidence

Suppression of results of assault defendant's breath test for alcohol was appropriate sanction for state's multiple discovery violations regarding calibration test, which resulted in multiple continuances and the disclosure of requested information regarding the results only after a mistrial had already occurred; disclosure order, continuance, and mistrial were inadequate remedies, defendant was prejudiced as jury in first trial might have acquitted him, test results were not vital to state, and crime lab made specific effort to conceal results of calibration test. *State v. Meza*, 203 Ariz. 50, 50 P.3d 407 (App. 2002).

Suppression of State's blood-alcohol test results, rather than dismissal of cases, was proper remedy for State's failure to provide reasonably reliable second sample to drivers in prosecution for driving under influence of alcohol; State had not acted in bad faith. *State v. Harrison*, 157 Ariz. 184, 755 P.2d 1172 (App. 1988).

Admitting inadmissible evidence

Otherwise inadmissible evidence cannot be made admissible because of defendant's discovery abuse. *State v. Harris,* 152 Ariz. 150, 730 P.2d 859 (App. 1986).

Motions to dismiss

Even if motion to dismiss criminal case on basis of county attorney's failure to timely disclose names of witnesses is untimely, trial judge may grant motion or some other sanction if, in his discretion, he concludes that defendant has been so prejudiced by nondisclosure that he has been denied fair trial. *State v. Pickett*, 121 Ariz. 142, 589 P.2d 16 (1978).

Motion to dismiss criminal case based on failure of county attorney to timely disclose names of witnesses was not timely, in light of facts that motion was made less than 20 days before date set for trial and that ten-day period for disclosure of witnesses had expired one and one-half months before the 20-day cutoff of pretrial motions. *State v. Pickett*, 121 Ariz. 142, 589 P.2d 16 (1978).

Mistrial

In prosecution for second-degree murder, trial court did not abuse its discretion in denying mistrial sanction for prosecution's failure to disclose two statements by witness; defendant did not show prejudice as result of denial of such sanction, where trial court allowed defense four days in which to interview such witness and to attempt to impeach her. *State v. Lawrence*, 123 Ariz. 301, 599 P.2d 754 (1979).

In prosecution for stabbing fellow inmate at state prison, trial court was not required, sua sponte, to declare mistrial when state disclosed on the third day of trial that it had just discovered that a knife had been found on day of stabbing in area of garbage bins where name of guard who found knife was given to defense attorneys but neither attorney pursued the matter. *State v. Longoria*, 123 Ariz. 7, 596 P.2d 1179 (App. 1979).

Where on third day of trial defendants filed motion requesting state to produce photographic lineup, at hearing on motion state came as close as possible under circumstances to compliance with production, and defense counsel accepted state's explanation and trial court thereupon denied motion to produce on grounds that it was moot, trial court did not err in denying mistrial based on state's failure to preserve photographic lineup shown to victim while he was in ambulance. *State v. Longoria*, 123 Ariz. 7, 596 P.2d 1179 (App. 1979).

Where, in prosecution for assault with deadly weapon, it was not material who actually shot prosecuting witness, "suppression" of clothing did not violate judicial ruling requiring mitigating or negating material or information to be revealed to defendant, nor Criminal Rule 15.1 promulgated to meet such judicial ruling, and motion for mistrial on ground of such alleged suppression was erroneously granted. *State v. Parker*, 116 Ariz. 3, 567 P.2d 319 (1977).

New trial

Trial court did not abuse its discretion in ordering new trial for defendant accused of murder based on prosecution's failure to disclose three forms of assistance received by state witnesses where defendant had made specific request for the undisclosed information and the information might have affected outcome of the trial in that it affected credibility of the witnesses. *State v. Lukezi,* 143 Ariz. 60, 691 P.2d 1088 (1984).

Trial court did not err by denying defendant a new trial because prosecutor failed to disclose, prior to trial, evidence that informant had passed bad checks while acting under an assumed name, where failure to make pretrial disclosure of evidence was not deliberate on part of prosecution since prosecutor had no knowledge of it prior to defense counsel's motion to continue, the evidence was obtained during a request for continuance and presented to jury when trial resumed, and there was no indication in the record that the half-day continuance necessary to obtain the evidence prejudiced the defendant. *State v. Eisenlord*, 137 Ariz. 385, 670 P.2d 1209 (App. 1983).

Where testimony before jury in prosecution for unlawful sale and possession of narcotics indicated that there was "deal" involved regarding witness' testimony, but information regarding specific promises made would have had little or no effect on outcome of trial, such information would not be grounds for new trial. *State v. Maddasion*, 130 Ariz. 306, 636 P.2d 84 (1981).

While it was improper for the prosecutor to fail to divulge to defense counsel certain exculpatory evidence known to the prosecution, it was not necessary or appropriate for the trial court to grant a new trial as to the entire case when the exculpatory evidence applied only to two counts. *State v. Jones*, 120 Ariz. 556, 587 P.2d 742 (1978).

In bribery prosecution in which state's principal witness testified that he and accused paid sum of $2,000 to investigator for purpose of influencing him as a public employee, grant of new trial to accused due to state's failure to disclose fact that such witness had testified before real estate commission that the bribe had been paid by certain other person and not by accused and that bribe had been paid in cash rather than by check was not an abuse of discretion, despite contention that such testimony before commission only amounted to cumulative impeachment which would not have affected the verdict. *State v. Lippard*, 27 Ariz.App. 269, 553 P.2d 1254 (1976).

Denial of motion for new trial, grounded in part upon failure of county attorney to reveal testimony of a witness, did not constitute an abuse of discretion where no attempt was made by defense to locate such witness and defendant was not aware of the possible testimony of witness until report was filed on last day of trial, where, in addition to lack of due diligence on part of defendant, testimony of the witness, consisting of observations of events which occurred after shooting took place, would probably not have changed the verdict, and where, further, the witness was endorsed upon the indictment, filed less than one month before trial, as required by the rules. *State v. Brannin*, 109 Ariz. 525, 514 P.2d 446 (1973).

Award of new trial on ground that witness should not have been permitted to testify at trial because of failure of county attorney either to endorse his name on indictment or to include it in bill of particulars requested by

defendant, was error. *State v. Chitwood*, 73 Ariz. 161, 239 P.2d 353 (1951), modified on rehearing 73 Ariz. 314, 240 P.2d 1202.

Review

In assault and murder prosecution, any error in imposing discovery sanction of precluding testimony that was to impeach victim's out-of-court identification of defendant and was relevant only to assault charge was harmless, in light of defendant's late disclosure of testimony and overwhelming evidence of defendant's guilt on that charge, including two eyewitnesses other than victim who identified defendant as person who shot victim and defendant's admission to his probation officer that he shot victim. *State v. Valencia*, 186 Ariz. 493, 924 P.2d 497 (App. 1996).

Absent showing of abuse of discretion by trial court, reviewing court will not disturb trial court's choice of sanction for failure to timely disclose material evidence or its decision not to impose sanction. *State v. Towery*, 186 Ariz. 168, 920 P.2d 290 (1996).

In prosecution for burglary of a pornographic bookstore in which central issue was intent to steal and in which prosecutor argued that defendant at time of apprehension had just "ducked down" after being surprised at the cash register, where defendant was intoxicated and money stacked on the cash register was untouched, failure to disclose, before trial, alarm company's record containing statement that guard found defendant lying on the floor behind the register reading a book, and failure to grant a continuance to obtain the guard as a witness when the trial court decided, just before final argument, not to admit the record which had been offered by the State and to which defendant did not object, deprived defendant of fundamental fairness, requiring reversal. *State v. Campbell*, 115 Ariz. 65, 563 P.2d 320 (App. 1977).

Restitution

Assault defendant was entitled to restitutionary monetary sanction to alleviate the cost of extraordinary discovery burden that state forced him to undergo by withholding discovery and misrepresenting the existence and availability of information subject to discovery; five years after arrest defendant was still awaiting trial. *State v. Meza*, 203 Ariz. 50, 50 P.3d 407 (App. 2002).

A law enforcement agency participating in a criminal investigation operates as an arm of the prosecutor in matters of discovery; when such an agency is recalcitrant, withholds discovery, and misrepresents the existence and availability of information subject to discovery, its conduct is the State's conduct, and imposes a restitutionary burden on the State. *State v. Meza*, 203 Ariz. 50, 50 P.3d 407 (App. 2002).

## Rule 15.9—Appointment of Investigators and Expert Witnesses for Indigent Defendants

**a. Application for Appointment.** An indigent defendant may apply for the appointment of an investigator and expert witness, and in a capital case an indigent defendant may also apply for the appointment of a mitigation specialist, to be paid at county expense if the defendant can show that such assistance is reasonably necessary to present a defense adequately at trial or sentencing.

**b. Ex Parte Proceeding.** No ex parte proceeding, communication, or request may be considered pursuant to this rule unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be recorded verbatim and made a part of the record available for appellate review.

**c. Mitigation Specialist.** As used in this rule, a "mitigation specialist" is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate, and present psycho-social and other mitigation evidence.

CASES

Construction and application

To warrant the appointment of a county-funded expert witness as "reasonably necessary" to the presentation of a selective enforcement defense by indigent African-American and Latino defendants who were charged with drug offenses following traffic stops, based on their claim of "racial profiling," defendants had to demonstrate that the state's actions had a discriminatory effect and that they were motivated by a discriminatory purpose. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005).

For purposes of the criminal procedure rule permitting the appointment of a county-funded expert witness whose assistance is reasonably necessary to presentation of a defense by an indigent defendant at trial or sentencing, the phrase "at trial or sentencing" encompasses the whole of a criminal proceeding at the trial court, the pretrial phase, the trial phase, and the judgment and sentencing phase. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005).

The term "defense" is not limited to a defense on the merits, but is intended to encompass any set of identifiable conditions or circumstances which may prevent a conviction for an offense. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005).

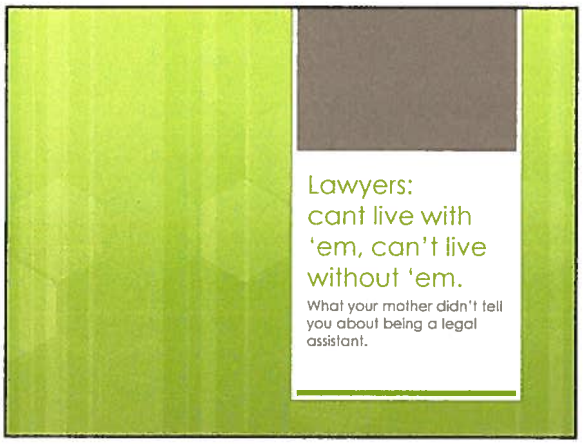
The term "defense" encompasses a claim of selective enforcement of the traffic laws. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005).

Due process

The denial of expert witness assistance to a criminal defendant can violate the Due Process Clause when such testimony is reasonably necessary for an indigent defendant to present a defense. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005).

Evidence

When a defendant moves for appointment of a county-funded expert witness to assist in presenting a selective enforcement or selective prosecution defense based on the equal protection clause, the trial court should determine whether the defendant has presented credible evidence of both discriminatory effect and intent, but purely statistical evidence, while helpful, is rarely sufficient to support an equal protection claim. *Jones v. Sterling*, 210 Ariz. 308, 110 P.3d 1271 (2005).




## Lawyers need to be educated:

- Lawyers have no idea how many skills you have and how dedicated to the office mission you are.
- You are **the glue** that holds the prosecution team together
- This requires you to know the rules of the game *and the players*
- If you are not being included, ASK TO BE!

## Who is on the team?

- Effective teams are made up of people who fill the gaps in the skill sets of the other team members.
- Who is on the prosecution team? Lead lawyer, second chair, legal assistant, secretarial support, victim/witness advocate, investigator and.....

## … don't forget the "cousins"…

- IT
- File manager
- Receptionist
- Person with the office checkbook

## Insist on clear directions and deadlines

- Confirm what the lawyer is asking for and when it's *needed*, as opposed to when they *want* it.

## The Dirty Harry rule:

- A man's got to know his limitations:

## Help, Help me Rhonda....

- Advise the lawyer when there is more on your plate than you can complete on time; ask the lawyer which item gets priority
- Develop back-up
- Volunteer to help someone; then you won't feel so needy asking for help.

## Develop a new skill when you see a gap....

- Are you a technophobe? Or are you the queen of powerpoint? Do you love numbers? How are your Excel skills? Do you have graphic arts skills?
- Most new lawyers don't know that they can summarize voluminous data to present to a jury or a grand jury. Show them how to do it with a spiffy chart.

## Be the calendar guru

- Many new lawyers ,and some experienced ones, don't really know how to keep a calendar; it's not enough to calendar a deadline.
- One must calendar the time needed to *do* the work that is due on the deadline. Offer to block out time and schedule work time into the calendar for that work.

Do you have a list of contacts at:

- Adult probation?
- Juvenile probation?
- Court admin?
- Justice and City courts?
- Law enforcement agencies?
- The jail?
- The governor's office for extradition?
- The office of ct. interpreters?

- Get names and numbers of people **behind** the main number.

## Develop a network of contacts

## Get to know the victim/witness advocates

- Showing the victim that you are on the team early, makes them more willing to work with you.
- When a victim needs to be found for trial or hearings, the victim who knows you is more likely to return your calls or answer your emails.

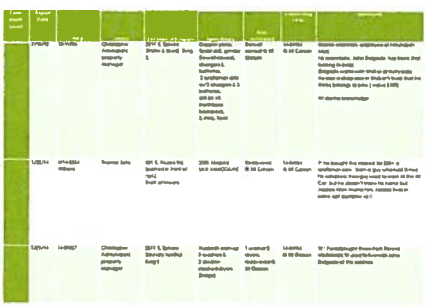
## NOW YOU TRY IT!

## Team exercise 1:

- You have just received a set of DRs describing 14 auto burglaries all around your jurisdiction in a 2 week period:
- the only thing in common among them is that river rocks were used to break in;
- some of the vehicles are owned by companies, some by individuals; many are rental cars with out of country tourists as drivers/renters; some occurred on dark streets some in hotel parking lots some in shopping areas;
- the items taken range from nominal amounts of change, to registration slips; to clothing, jewelry, cameras, iPad, phones and one dog.
- Create a chart that will summarize all the relevant info for these events:

**State v. Jorge Perez, Robert Walker & Edward Hunt**

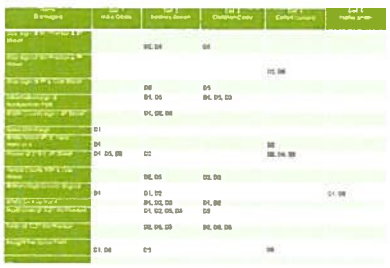
**Rpt. Trkg. 14-04-0504 5/7/14 @ 1200**



## Team Exercise 2:

- You have just received a police report where 8 teenagers when on a graffiti rampage over a Saturday night.
- Community leaders woke on Sunday morning to find buildings, cars, traffic signs, freeway bridges, a church and a horse tagged with spray paint.
- Some good detective work and a lot of outside videos develop 8 suspects. The 8 are interviewed and all implicate each other, but no one of them implicates all the others.
- Design a tool to keep track of the statements

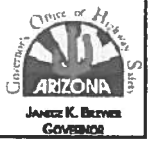
**State v.**
**Michael Gibbs, Rodney Green, Christian Cady, Collyn Cunard & Hattie Smith**
**Rpt. Trkg. 13-12-0293**
**DRs 13-00837, 00843 & 00848**
**DR= not 100% sure that person they are naming committed the damage**



## Team Exercise 3:

- Create a checklist that will facilitate DUI prosecution and charging.

# 2014 APAAC
# Legal Assistant Conference
DUI Updates, Reminders & Tips

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[redacted] Three-day DRE Sc[redacted]

[redacted] Misc. - *Amicus b*[redacted]


## Stop of Vehicle Brake Light

No violation of ARS § 28-939 for vehicle to have brake light at top rear of vehicle not working when other two are.

Officer did not have grounds for stop when didn't observe any other traffic infractions nor articulate any other basis for stop.

***State v. Fikes*, 228 Ariz. 389 (App. 2011).**

## Stop of Vehicle Tail Light

Officer who observed, vehicle with only one tail light working did not have grounds to stop for tail light statute, (§ 28-925) but did have grounds to stop for safety concerns.

***State v. Becerra*, 231 Ariz. 200 (Jan. 10, 2013).**

## Stop of Vehicle

- Court may consider any observed traffic violation as basis for stop.
- Analysis is not limited to violations that were relied upon by officer who made the stop if basis is testified to in court.

***State v. Whitman***, 661 Ariz. Adv. Rep. 9 (May 20, 2013)

## Stop of Vehicle Reminders

- **Community Caretaking**
  - ***Becerra***
  - ***State v. Organ***, 225 Ariz. 43 (App. 2010).
  - ***State v. Mendoza-Ruiz***, 225 Ariz. 473 (App. 2010).
- **Provide ALL Reasons/Support for Stops**
  - ***Whitman***
  - **Avoid *Livingston* situations**
    - **Title 28 AND**
    - **Impairment**

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GOVERNOR

## Reminders

- Good Faith
- Exclusionary Rule (suppression) is NOT Automatic
  - *Herring v. US*, 555 U.S. 35 (2009).
  - If relying on overturned precedent – *Davis v. US*, 564 U.S. ___ (2011)
- Inevitable discovery. *State v. Rojers,* 216 Ariz. 555 (App. 2007)
- Look for no stop – *Robles*
- AZ no tougher than feds except for home searches

## Anonymous Tips

- *Navarette V. California,* 12-9490.
- Officers who received (anonymous) 911 tip about drunken/reckless driver, had grounds to stop even though he did not corroborate any dangerous driving before stopping the vehicle.
- Totality of the circumstances standard

ARIZONA
JANICE K. BREWER
GOVERNOR

## Anonymous Tips

- *Navarette V. California,* 12-9490.
- Reminders for tips:
  - Must be reliable
    - Is it traceable? 911 calls. Do we have name/# ?
    - How much time has elapsed?
      - Between incident & call
      - Between call and officer observation of vehicle
    - Proximity to reported location
    - Did caller claim eye witness status?

## Anonymous Tips

- *Navarette v. California,* 12-9490.
- Reminders for tips:
  - Must be reliable
    - How well did vehicle match description?
    - Was any future conduct described & verified?
    - More than one caller?
  - Tip must provide grounds for stop
  - Officer's additional observations
  - How long did officer follow the suspect?

## Reminder:

Ask – Does 4th Amendment Apply?

**1) Did defendant have an expectation of privacy?**

**2) Was there a search or seizure?**

**3) Was there State action?**

**If so – was it reasonable, is there a warrant exception?**

## Bicycles

- ARS 28-817(A) requiring bikes to have lamp (500 ft. visible light) on front, applies to bikes being operated on sidewalk as well as roadway.

*State v. Baggett,* 232 Ariz. 424 (App. 2013).

## Pat Down Search

- Officers had reasonable suspicion to perform weapons pat-down which included removing backpack & placing on patrol car
  - Had grounds to stop
  - 2:30 a.m. in area known for high crime
  - Defendant appeared nervous
  - Defendant was evasive answering questions about how he acquired the backpack
  - Backpack could hold a weapon

*State v. Baggett, supra.*

## Plain Smell

- Officers had probable cause to search backpack
  - Had grounds to stop
  - Smelled marijuana coming from backpack immediately after placing backpack on hood of patrol car.

*State v. Baggett, supra.*

## Plain Smell Doctrine

- Officers must lawfully be in position to view/smell the object
- Its incriminating nature must be immediately apparent
- Officer must have lawful right of access to the object
- (did not address effect of medical marijuana act)

*State v. Baggett, supra.*

## Carboxy THC

- To prosecute under A.R.S. 28-1381(A)(3) the metabolite must be capable of impairment
  - No Carboxy THC cases under this statute
  - Tell officers to get blood ASAP
  - Some labs test for Hydroxy some do not
  - Some labs are switching cutoff levels to a 1

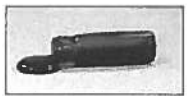
*State v. Harris* (*Shilgevorkyan*, RPI),

## Marijuana

## Forms of Cannabis

Marijuana

Hashish



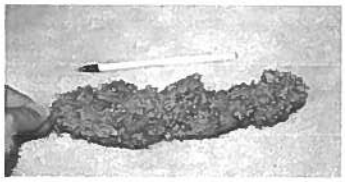
Hash Oil

Marinol

XXI-3

## Cannabis

- Active Ingredient: Delta 9 Tetrahydrocannabinol (THC)



## Metabolites of THC

- **Hydroxy THC**

  **Causes Impairment and Euphoria**

- **Carboxy THC**

  **(Not psychoactive)**

(A)(3) – have to prove impairing metabolite

XXI-5

## Not Your (Grand)Parents' Marijuana

- Average THC:
  - 1983: <4%
  - 2007: 7.3%
  - 2008: 10.1%

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## On-set & Duration of Marijuana's Effects

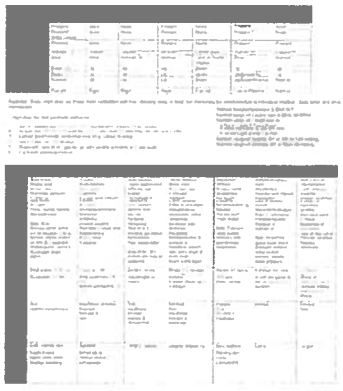


- **8-9 seconds - User begins to feel & exhibit effects**
- **10-30 minutes - Peak effects are reached**
- **2-3 hours - User continues to feel & exhibit effects**
- **3-6 hours - User feels "normal"**
- **May exhibit effects up to 24 hrs without awareness of effects**

**Note: Evidence of marijuana use may be present in blood/urine tests for extended periods after use.**

XXI-4

DRE Matrix



## Expected Observations/ Indicators of Impairment

**Marijuana**

- Psychophysical
  - Divided attention impairment
  - Poor coordination & balance
  - Problems with divided attention tasks
  - Slowed internal clock

## Expected Observations/ Indicators of Impairment

- Eye Indicators
  - HGN & VGN – not present
  - THC - if see HGN, may need to test for additional substances
  - Lack of convergence
  - Pupil size - dilated or possibly normal

## Evaluation of Subjects Under the Influence of Cannabis

**Vital Signs:**

- **Pulse - up**
- **Blood pressure - up**
- **Body temperature - normal**

## General Indicators

- Odor of marijuana
- Impaired perception of time and distance
- Marked reddening of white of eyes
- Body tremors
- Disorientation
- Impaired attention
- Relaxed inhibitions
- Eye lid flutters
- Residue/raised taste buds

**Uses "dude"**

## What Do The Numbers Mean?

- Not Much - THERE IS NO UNIVERSAL LEVEL OF IMPAIRMENT
- Cases are best handled on a case by case basis.
- Documented case facts (symptoms) are a critical component of any toxicological interpretation.

## What Do The Numbers Mean?

- For vast majority of drugs, no direct correlation of blood drug concentrations with degree of impairment currently exists.
- There is no "legal limit" so must look at signs of impairment

## Challenges

- Claim - Marijuana does not impair driving

> Marijuana Smoking Associated With Minimal Changes In Driving Performance, Study Finds
> FRIDAY, 28 MAY 2010 13:00 PRESS RELEASE AUTOMOTIVE
>
> Hartford, CT—(ENEWSPF)—May 28, 2010 Subjects exhibit virtually identical psychomotor skills on a battery of driving simulator tests prior to and shortly after smoking marijuana, according to clinical trial data published in the March issue of the *Journal of Psychoactive Drugs*.

32

> Investigators reported that volunteers performed virtually the same after smoking cannabis as they did sober and/or after consuming a placebo. "No differences were found during the baseline driving segment (and the) collision avoidance scenarios," authors reported.

33

## Whose Marijuana?

Subjects performed the tests sober and then again 30 minutes after smoking a single marijuana cigarette containing either 2.9 percent THC or zero THC (placebo).

- Remember Average THC:
  - 1983: <4%
  - 2007: 7.3%
  - 2008: 10.1%

## Medical Marijuana

Reminder

- Medical marijuana is NOT a defense to DUI in Arizona

2014

# Legislative Update

# Signed This Session

## Victim's Right to Privacy

**HB 2454**

- **Requires victims' identifying & locating information obtained, compiled or reported by law enforcement & prosecutors to be redacted from case records including discovery.**
- **Defines indentifying information & locating information**
- **Makes amendments to escort, child prostitution & other statutes**
- ***Effective date 7/23/2014***

***Amends A.R.S. § 13-4434 & others***

## HB 2454 Responded to *Gill*

- Prosecutorial offices cannot unilaterally redact victims' birth dates from law enforcement reports disclosed to defense.
- Prosecutor must obtain court order to authorize the redaction.
- *Gill* controls until July 23, 2014.

*Montgomery v. Hon Chavez* (*Gill,* Real Party in Interest) CV-13-0274-PR.

## 2013 Leaving Accident Scene

**HB 2505**

- Requires court to order drug screening if it is determined by preponderance accident was caused by drug/ alcohol use
- Makes it a class 6 felony for driver involved in an accident to fail to render aide to the injured.

***Effective date 7/23/2014***

***Amends A.R.S. §§ 8-381; 13-3423; 12-16.08***

## Hot Topics

- Blood draws/breath tests
  - *McNeely*
  - *Tyler B.*
- Rule 702 Cases
  - Retrogrades
  - Blood testing
- Measurement of Uncertainty

## Spice, Bath Salts & Krokodil

## Bath Salts

- Synthetic drug - mimics effects of cocaine/crack, meth & ecstasy
- Highly addictive – intense cravings & uncontrollable urges for more
- Causing deaths – brain damage, heart attacks, hallucinations, self mutilations, suicidal tendencies – even after effects gone
- Sold on-line/smoke shops - $30 small package
- Illegal in AZ

## Spice

- Spice, or K2 - synthetic cannabis chemical product that is added to herbal or plant material.
- Mimics effects of Marijuana - plus.
- Anywhere from 4 to 800 times as potent as marijuana.

## Krokodil

## Krokodil – Synthetic Heroin

- Russian Designer Drug
- Highly Addictive (high is shorter)
- Rots user's flesh
- Cheap
  - Heroin can cost $150+ per use
  - Krokodil costs $6 - $8 per injection

## Why Does the Skin Rot?

- If made in scientific lab – is probably pure enough & will not
- If made in kitchen users often add gasoline, red iodine, phosphorous & hydrochloric acid

*Thank You!*

**Beth Barnes**
**AZ Traffic Safety Resource Prosecutor**
**beth.barnes@phoenix.gov**